

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID PORTILLO,) Case No. CV 08-3523-JVS(RC)
Petitioner)
vs.) ORDER ADOPTING REPORT AND
JOHN MARSHALL,) RECOMMENDATION OF
Respondent.) UNITED STATES MAGISTRATE JUDGE
) AND ORDER DENYING
) CERTIFICATE OF APPEALABILITY
)
)
)

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the Petition and other papers along with the attached Report and Recommendation of United States Magistrate Judge Rosalyn M. Chapman, as well as petitioner's Objections, and has made a de novo determination.

IT IS ORDERED that (1) the Report and Recommendation is approved and adopted; (2) the Report and Recommendation is adopted as the findings of fact and conclusions of law herein; and (3) Judgment shall be entered denying the petition and dismissing the action with prejudice.

//

This Court finds an appeal would not be taken in good faith, and that petitioner has not made a substantial showing that he has been denied a constitutional right, for the reasons set forth in the Report and Recommendation of the United States Magistrate Judge, and accordingly, a certificate of appealability should not issue under 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b). Slack v. McDaniel, 529 U.S. 473, 483, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000); Mayfield v. Calderon, 229 F.3d 895, 900 (9th Cir. 2000). Thus, IT IS FURTHER ORDERED that a Certificate of Appealability be DENIED.

FINALLY, IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order, the Magistrate Judge's Report and Recommendation and Judgment by the United States mail on petitioner.

DATED: June 29, 2010

James V Nelson

JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

R&Rs\08-3523.ado
6/2/10